

7 PERC ¶ 14123

HEERA UNIT DETERMINATION - SERVICE EMPLOYEES UNIT

California Public Employment Relations Board

In the Matter of: Unit Determination for Service Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)

Docket No. SF-RR-1002 et al.

Order No. 245c-H

March 31, 1983

HEERA Unit Determination (Service Employees)

Before Tovar, Jaeger, Morgenstern and Burt, Members*

Unit Determination -- Casual Employees -- Sports Attendants -- -- 16.452,

34.392 Following university employees were casual employees where they worked sporadically: (1) referee/umpires; (2) sports event attendants; (3) ushers; (4) and house managers.

Unit Determination -- Casual Employees -- Expectation Of Continued Employment

-- -- 16.452, 34.392 In absence of specific facts demonstrating that employees did not have reasonable expectation of continued employment, university's claim that following classifications were casual was rejected: (1) sports assistant; (2) assistant rescue worker; (3) parking assistant; (4) airport services helper; (5) driver; (6) farm laborer; (7) laboratory helper; and (8) odd jobber.

APPEARANCES:

Philip E. Callis, Attorney for California State Employees Association; Glenn Rothner, Attorney (Reich, Adell & Crost) for American Federation of State, County and Municipal Employees, AFL-CIO; Douglas H. Barton, Bonnie Kathleen Gibson, Lynne C. Hermle and Mary Maloney Roberts, Attorneys (Corbett, Kane, Berk & Barton) and James N. Odle, Associate Counsel for the Regents of the University of California.

DECISION

On September 30, 1982, the Public Employment Relations Board (PERB or Board) issued a decision¹ under the Higher Education Employer-Employee Relations Act (HEERA)² creating two bargaining units of service employees at the University of California (UC). One unit consisted of service employees at the Lawrence Livermore National Laboratory (LLNL), and the second consisted of all other service employees throughout the UC system. Pending that decision, exclusionary issues were raised by the parties with respect to the alleged managerial, supervisory, confidential and casual status of employees in these units.³ The Board has previously decided the exclusionary issues in the LLNL service unit.⁴

In the systemwide service unit, the parties have stipulated for the purposes of any representation election to the exclusion, as managerial, supervisory or confidential, of the classifications and employees listed in Appendices A and B attached hereto. The parties have also stipulated that each employee organization may identify certain disputed employees who shall vote challenged ballots in any representation election if the parties are unable to agree whether they should be included in or excluded from the unit. The Board has held that it will approve a stipulation in a

unit determination matter when the stipulation does not contravene the Act or established Board policies. *Centinela Valley Union High School District* (8/7/78) PERB Decision No. 62. A review of the record herein reveals that it is adequate to support the stipulations. Therefore, the stipulations are approved by the Board.⁵

The only remaining exclusionary issues to be decided in the systemwide service unit are those involving alleged casual employees.

CASUAL ISSUES

Casual employees are those who, due to their sporadic or intermittent relationship with the employer, lack a sufficient community of interest with regular employees to be included in the representational unit. *Unit Determination for Employees of the California State University and Colleges Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act)* (9/22/81) PERB Decision No. 173-H; citing *Mission Pak Co.* (1960) 127 NLRB 1097 [46 LRRM 1161]. In considering the status of alleged casual employees and the appropriateness of excluding them from the systemwide service unit, we are required to consider the following criteria set forth in subsection 3579(a) of HEERA which, in pertinent part, provides:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which such employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

In addition to the above statutory criteria, the Board has consistently held, in accordance with other jurisdictions, that such factors as qualifications, job function, compensation, hours of work, fringe benefits, integration of work function, and interchange between employees are relevant in determining community of interest.⁶ As stated in *Monterey Peninsula Community College District, Id.*:

. . . community of interest is not determined by going down a check list of these factors. The point of the comparison is to reveal the interests of the employees and ascertain whether they share a substantial mutual interest in matters subject to meeting and negotiation. (Citation omitted.) The interests of included employees must be mutual not distinct, and substantial not tenuous. Thus, employees may be excluded from a particular unit either because their interests are separate and apart from those of the employees in that particular unit, (citation omitted) or because their interest in negotiable matters subject to the control of the employer is so insubstantial that they do not share mutual interests with other unit employees. (PERB Decision No. 76 at p. 13.)

UC has designated several job classifications in the systemwide service employees unit which it claims are designed exclusively for employees who have a casual employment relationship with the university. These classifications are:

Classification

Class Code

Sports Assistant

4021

Referee/Umpire

4022

Sport Event Attendant

4041

Assistant Rescue Worker

5028

Parking Assistant

5335

Head Usher

6272

Senior Usher

6273

Usher

6274

House Manager II

6282

House Manager I

6283

Assistant House Manager

6284

Airport Service Helper

8454

Driver

8483

Farm Laborer

8543

Laboratory Helper

9606

Odd Jobber

9608

UC alleges that many of these classifications are designed for use in part or exclusively by

registered students of the university. Where the employment of students in the classifications listed above is contingent upon their status as students of the university, they have been excluded by stipulation. See *Unit Determination for Employees of the Regents of the University of California* (8/4/82) PERB Order No. Ad-114b-H.

UC makes two arguments with regard to alleged casual employees. It first contends that any employee in these classifications who does not qualify for membership in one of the several retirement systems for which university employees may be eligible should be deemed casual and excluded from the bargaining unit. Generally, to be eligible for membership in these systems, a university employee must work more than 50 percent time and have an appointment be of more than a year's duration. UC argues that only employees who meet these criteria for retirement system participation have sufficient employment interests to warrant their inclusion in the bargaining unit.

UC, in essence, is attempting to define a point at which an employee's relationship with the university is transformed from intermittent and sporadic to substantial and continuing. UC contends if an employee fails to satisfy the qualifications for participation in its retirement system, the status of that person is per se casual.

The Board has specifically rejected such an approach. In *Dixie Elementary School District* (8/11/81) PERB Decision No. 171, the Board modified an existing unit of regular full-time, substitute and temporary teachers by including certain unrepresented day-to-day substitutes and temporary teachers. The Board noted that there was:

. . . no indication that the [petitioned-for] teachers' interest and commitment to, or empathy with, the concerns of others within the bargaining unit, is proportional to their number-of-days-employment. Moreover, to impose a threshold requirement for inclusion in the unit based on number-of-days-employment would be inevitably arbitrary [footnote omitted]. There is no rationale instructing where the line establishing the minimum should be drawn. Accordingly, this Board does not require, as a condition of unit membership, that a classroom teacher work for a specified number of days. (PERB Decision No. 171, at pp. 7-8.)⁷

Additionally, the Board has rejected the argument that less than 50 percent part-time employment alone should automatically result in the casual designation of an employee. See *Belmont Elementary School District, Id.*, EERB Decision No. 7; *Paramount Unified School District* (10/7/77) EERB Decision No. 33.

The mere fact that an employee does not work a sufficient number of days or percent of time to qualify for participation in a university retirement system does not, in and of itself, indicate that the employee does not share a community of interest with other unit members. The record reveals that the claimed casual employees may perform duties similar to those of other unit employees; receive the same rates of pay; have the same qualifications, skills and education; work the same shifts; report to the same supervisors; and receive roughly equivalent benefits. Absent evidence to the contrary, there is no reason to believe that such an employee does not share a substantial community of interest with other unit employees. Ineligibility to participate in one of the university retirement systems is not, by itself, enough to persuade us differently.

UC secondly argues that if the Board does not adopt the retirement system eligibility criterion, the individuals in the classifications claimed as casual should be excluded from the service unit because they lack a sufficient community of interest with other unit employees and do not have a reasonable expectation of continuing regular employment.

UC cites many instances in which employees in disputed classifications are employed exclusively on a per-event or per-game basis. UC contends that these employees have only a sporadic, intermittent relationship with the university and, therefore, lack a sufficient community of interest

with other service employees to warrant their inclusion in the unit.

Referee/Umpire (Class Code 4022)

To the extent discussed below the Board agrees with UC's contentions. For instance, employees in the referee/umpire classification are employed to work as officials at intramural athletic events. Typically, they are employed throughout an intramural season, but may work as little as one game. They are paid only for the time they spend officiating. There is no indication that they have any regular contact with other unit employees, share any of the same concerns over working conditions, or have any of the same career expectations.

Sports Event Attendant (Class Code 4041)

The same is true for incumbents in the sports event attendant classification. These employees sell and collect tickets during intercollegiate athletic events. Throughout the year they are eligible to work at approximately five or six home football games, 12 to 15 basketball games and six gymnastic events. Employees in this classification generally do not work every event and have no guarantee of being called to work a minimum number of times. When asked to work an event, an individual is employed and paid for approximately six hours.

Head Usher (Class Code 6272), Senior Usher (Class Code 6273) and Usher (Class Code 6274)

Incumbents in the head usher, senior usher, and usher classifications are employed on the same event-by-event basis. At such events, ushers take tickets and guide members of the audience to their seats. They are employed only when events attracting audiences to university facilities occur. The record reveals, at least at the UC Berkeley campus, that ushers are not guaranteed a minimum number of hours per week, and in fact average less than four hours per week.

House Manager II (Class Code 6282), House Manager I (Class Code 6283) and Assistant House Manager (Class Code 6284)

Finally, employees in the house manager II, house manager I, and assistant house manager classifications experience the same type of periodic employment. Incumbents in each classification are involved in the direction of the house staff for a public event or performance in a university facility. While house managers are invested with a great deal of responsibility, they are employed only on an individual, per event basis. The record indicates that the positions in the house manager series are explicitly distinguished from so-called auditorium managers by the fact that they have only per-event duties as opposed to continual, overall departmental responsibilities.

The common thread for employees in all of the classifications mentioned above is that their employment is sporadic at best, and their hours of work, when employed, are extremely limited. Further, it appears that employees in these classifications generally have no regular contact with other unit members and, undoubtedly, do not look at their jobs with the same career expectations. Moreover, there is no indication that these employees possess any of the same qualifications, training or skills of other service unit employees. Since these employees lack both a continuing relationship and common interest with other unit members, we exclude the classifications discussed above as casual.

Sports Assistant (Class Code 4021)

On the other hand, the record discloses that employees in a number of other contested classifications work on a relatively consistent basis with other unit members, and in fact do share mutual interests in matters subject to negotiations. For instance, those in the sports assistant classification instruct and/or coach at intramural athletic events and perform many other duties associated with the university's physical education programs. Specifically, sports assistants may be asked to organize and direct practice sessions, assist in conducting sports workshops, plan class equipment needs, instruct participants on rules and procedures, collect fees, sell sports merchandise, maintain security and substitute for referees or lifeguards as required. Although the record is silent as whether these employees work full-time, they are employed throughout an

intramural season and may continue in such employment past the end of the sports season. There is no concrete evidence that such employment is limited and sporadic. Sports assistants indeed work under the same conditions, with the same supervision and same hours as other unit members. The mere fact that their employment does "not necessarily continue" from one intramural season to the next is not enough to convince us that these employees are casual. Thus, the sports assistant classification is included in the unit.

Assistant Rescue Worker (Class Code 5028)

Also in dispute are employees in the assistant rescue worker classification. These employees perform rescue and paramedical services primarily on the beaches at or near the UC Santa Barbara campus. In addition to alleging that these employees work only part-time, UC further claims that many assistant rescue workers serve only as substitutes for regular full-time rescue workers. As for the first contention, UC fails to specify the exact number of hours per week an individual works. Absent evidence that "part-time" employment equates to work which is clearly sporadic and intermittent, we do not find these employees to be casual. As for the second contention that some assistant rescue workers serve only as substitutes, we do not think this, in and of itself, is sufficient to warrant their exclusion from the unit as casual. Assistant rescue workers have the same supervision and qualifications, use the same equipment, work under the same conditions, and shoulder the same degree of responsibility to the public as other unit members. Thus, they share many mutual interests in working conditions with other unit members and, therefore, the assistant rescue worker classification is included in the unit.

Parking Assistant (Class Code 5335)

We reach the same conclusion with regard to employees in the parking assistant classification. While parking assistants are employed primarily to assist with the direction and handling of heavy automobile traffic during campus events which draw a large number of vehicles, the record also discloses that these employees share in the day-to-day operation and control of university parking lots and structures. They work under the same conditions and supervision, with the same health and safety concerns as other unit members. There is nothing in the record to support the conclusion that this work is intermittent, sporadic or temporary. Thus, parking assistants share a sufficient community of interest with other service employees and the classification is included in the unit.

Airport Service Helper (Class Code 8454)

With regard to the classification of airport service helper, the record indicates only that employees in this classification average approximately four hours of work per week and do not have continuity of employment. Absent specific facts showing sporadic and intermittent employment, the Board cannot conclude that these employees lack a sufficient community of interest with other unit employees. Therefore, we include them in the unit.

Driver (Class Code 8483)

UC additionally contends that employees classified as drivers should be excluded as casual. It presented facts indicating only that these employees work part-time and have no expectation of continued employment.

The driver class is intended for use by those who operate standard UC automobiles in the transport of passengers or supplies. Nothing in the record indicates that drivers do not share a community of interest with other unit employees. There are no facts showing that drivers do not have continuing employment. Absent such evidence, we reject the claim that these employees are casual and include the driver classification in the unit.

Farm Laborer (Class Code 8543)

The claim that those in the farm laborer classification are casual is also without merit. Farm laborers perform basic agricultural tasks at farm sites operated by the university. UC's evidence indicates that these employees often work on a seasonal basis and have no expectation of

continuing employment with the university. While there is little doubt that farm work is seasonal and that farm laborers may, in some cases, be laid off after planting or harvest periods, we cannot conclude that these employees have no expectation of continuing employment. The record is silent as to the percentage of farm laborers who are actually laid off, the percentage who are once again rehired, or the duration of their employment when hired to perform seasonal work. Absent this information, UC has failed to establish that these employees lack reasonable expectation of continuing employment with the university. What is clear from the record is that farm laborers are in direct contact with other unit members, work under the same conditions, perform essentially the same tasks, have the same supervision, and are subject to the same working hours. Thus, there is no reason to believe that farm laborers lack a significant interest in bargaining matters of importance to other unit members. The farm laborer classification therefore is included in the unit.

Laboratory Helper (Class Code 9606)

The same conclusion is reached with regard to employees in the laboratory helper classification. UC's evidence shows only that the laboratory helper position is one which is generally used for part-time employment, and that the position may only be for the duration of a particular research project. The record reveals that laboratory helpers work under the same conditions as other unit members, have generally the same qualifications, have the same supervision and perform similar tasks. There are no specific facts showing that these employees do not have a reasonable expectation of continuing employment and do not share the same concerns as other unit members over matters of employment. Therefore, the laboratory helper classification is included in the unit.

Odd Jobber (Class Code 9608)

Finally, UC contends that employees in the odd jobber classification should be excluded as casual. Odd jobbers perform miscellaneous unskilled maintenance and cleaning tasks around the university. Nothing in the record convinces us that these employees do not share with other unit members an interest in bargaining issues. Evidence presented by UC that incumbents in the odd jobber positions work less than full-time and for a limited duration is not sufficiently specific to establish that these employees are casual. Therefore, we conclude that the odd jobber classification is included in the unit.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

- (1) The classifications listed in Appendix A are excluded from the Systemwide Service Unit according to the stipulation of the parties and based upon the factual record in this proceeding.
- (2) The positions occupied by the employees listed in Appendix B are excluded from the unit according to the stipulation of the parties and based upon the factual record in this proceeding.
- (3) In accordance with the stipulation of the parties, each employee organization may identify certain disputed employees who shall vote challenged ballots in any representation election if the parties are unable to agree whether they should be included in or excluded from the unit.
- (4) The following classifications are casual and are excluded from the unit for the reasons stated in the foregoing Decision:

Classification

Class Code

Referee/Umpire

4022

Sports Event Attendant

4041

Head Usher

6272

Senior Usher

6273

Usher

6274

House Manager II

6282

House Manager I

6283

Assistant House Manager

6284

(5) The following classifications are not casual and are included in the unit for the reasons stated in the foregoing Decision:

Classification

Class Code

Sports Assistant

4021

Assistant Rescue Worker

5028

Parking Assistant

5335

Airport Service Helper

8454

Driver

8483

Farm Laborer

8543

Laboratory Helper

9606

Odd Jobber

9608

(5) Any technical errors in this Order shall be presented to the director of representation who shall take appropriate action thereon in accordance with this Decision.

*Chairperson Gluck did not participate in this decision.

1 *Unit Determination for Service Employees of the University of California Pursuant to Chapter 744 of Statutes of 1978 (Higher Education Employer-Employee Relations Act) (9/30/82) PERB Decision No. 245-H. See also the decision concerning requests for reconsideration and judicial review, Unit Determination for Technical Employees; Clerical Employees; Service Employees; Professional Scientists and Engineers, Lawrence Livermore National Laboratory; Professional Librarians; and Professional Patient Care Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Relations Act) (2/4/83) PERB Decision Nos. 241a-H and 244a-H through 248a-H.*

2 The HEERA is codified at Government Code section 3560 *et seq.* All statutory references are to the Government Code unless otherwise indicated.

3 Subsection 3562(1) of HEERA provides:

"Managerial employee" means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participate in decisions with respect to courses, curriculum, personnel and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of such duties.

Section 3580.3 of HEERA provides:

"Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

Subsection 3562(e) of HEERA provides:

"Confidential employee" means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management positions.

Managerial and confidential employees are excluded from coverage under HEERA in subsection

3562(f). Supervisory employees have limited rights as set forth in section 3580 *et. seq.*

4 *Unit Determination for Service Employees, Lawrence Livermore National Laboratory of the University of California, Pursuant of Chapter 744 of the Statutes of 1978 (Higher Education Employer-Employee Act)* (3/8/83) PERB Decision No. 245b-H.

5 The Board does not specifically designate these classifications and employees as managerial, supervisory or confidential. In the *State Employer-Employee Relations Act, Phase III, Unit Determination Proceeding* (10/18/79) PERB Order No. Ad-79-S, the Board stated that it:

. . . views the focus of the Phase III unit determination proceedings to be a determination of those rank and file employees who are to be *included* in the designated appropriate units. However, the burden is on the . . . party which may seek to exclude employees from units because of alleged managerial, supervisory or confidential status--to affirmatively justify their exclusion. This can be done by showing evidence of actual job requirements which would disqualify the subject employees from placement in representation units irrespective of which exclusionary category those employees may fit.

Thus, the Board only approves the exclusion of the classifications and employees from the unit and not the specific bases for the exclusions.

6 *Hartnell Community College District* (1/2/79) PERB Decision No. 81; *Monterey Peninsula Community College District* (10/16/78) PERB Decision No. 76. See also *Kalamazoo Paper Box Corp.* (1962) 136 NLRB 134 [49 LRRM 1715].

7 Temporary employees were also included in a bargaining unit of teachers in *Belmont Elementary School District* (12/30/76) EERB Decision No. 7, based on similar working conditions and employment as part of the regular faculty pool.

Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).
